

**STATE OF RHODE ISLAND  
ENERGY FACILITY SITING BOARD**

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**IN RE: REVOLUTION WIND, LLC  
APPLICATION TO CONSTRUCT A  
MAJOR ENERGY FACILITY**

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) Docket No. SB-2021-01  
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**MOTION OF REVOLUTION WIND, LLC FOR PROTECTIVE TREATMENT OF  
CONFIDENTIAL INFORMATION**

Revolution Wind, LLC (“Revolution Wind”) hereby requests that the Energy Facility Siting Board (the “Board”) grant protection from public disclosure to certain confidential, competitively sensitive, and proprietary information submitted by Revolution Wind in response to the Energy Facility Siting Board’s Third Set of Data Requests No. 3-3 (“EFSB 3-3”). Specifically, Revolution Wind seeks an order from the Board to protect certain confidential financial information contained in the Option to Purchase Easement (the “Option”) submitted as Attachment EFSB 3-3-1 with Revolution Wind’s response to EFSB 3-3. Revolution Wind requests protective treatment of this information, and seeks a determination that this information is not a public record, in accordance with R.I. Gen. Laws § 38-2-2(4)(B). Revolution Wind also hereby requests that, pending entry of that ruling, the Board preliminarily grant Revolution Wind’s request for confidential treatment.

**I. BACKGROUND**

On December 30, 2020, Revolution Wind filed its Application to Construct a Major Energy Facility with the EFSB. The Application was docketed on January 22, 2021. After public notice, the EFSB held a preliminary hearing on March 22, 2021. The purpose of the preliminary hearing was “to determine the issues to be considered by the EFSB in evaluating the application, and to designate those agencies of state government and of political subdivisions of the state

which shall act at the direction of the EFSB for the purpose of rendering advisory opinions on these issues, and to determine petitions for intervention.” Following the Preliminary Hearing, the EFSB issued a Preliminary Decision and Order dated April 26, 2021 (the “Preliminary Decision”), directing nine state and local agencies to submit advisory opinions by August 26, 2021. The Preliminary Decision also set the date for the final Board hearing for October 12, 2021.

The EFSB held the public hearing on October 12, 2021. Following the hearing, the EFSB propounded a Third Set of Data Requests to Revolution Wind on October 13, 2021. In response to EFSB 3-3, Revolution Wind submitted a copy of the Option. This motion seeks confidential treatment and protection from public disclosure of select, redacted portions of the Option.

## **II. LEGAL STANDARD**

The Access to Public Records Act, R.I. Gen. Laws § 38-2-1 *et seq.* (“APRA”), establishes the proper balance between “public access to public records” and protection “from disclosure [of] information about particular individuals maintained in the files of public bodies when disclosure would constitute an unwarranted invasion of personal privacy.” Gen. Laws § 38-2-1. Per APRA, “all records maintained or kept on file by any public body” are “public records” to which the public has a right of inspection unless a statutory exception applies. *Id.* § 38-2-3.

The definition of “public record” under APRA specifically excludes “trade secrets and commercial or financial information obtained from a person, firm, or corporation that is of a privileged or confidential nature.” *Id.* § 38-2-2(4)(B). The statute provides that such records “shall not be deemed public.” *Id.*

The Rhode Island Supreme Court has held that when documents fall within a specific

APRA exemption, they “are not considered to be public records,” and “the act does not apply to them.” *Providence Journal Co. v. Kane*, 577 A.2d 661, 663 (R.I. 1990). Further, the court has held that “financial or commercial information” under APRA includes information “whose disclosure would be likely . . . to cause substantial harm to the competitive position of the person from whom the information was obtained.” *Providence Journal Co. v. Convention Ctr. Auth.*, 774 A.2d 40, 47 (R.I. 2001).

### **III. BASIS FOR CONFIDENTIALITY**

By this Motion, Revolution Wind seeks confidential treatment for redacted portions of the Option submitted as Attachment EFSB 3-3-1. The Option contains confidential and proprietary information. Specifically, the redacted portions of the Option address the payment amounts agreed to by the parties to the Option. These terms resulted from Revolution Wind’s negotiation efforts. Revolution Wind employed commercial strategies that are proprietary to its business to negotiate and reach agreement on the payment terms. If this commercially valuable information were disclosed to Revolution Wind’s competitors, the value of Revolution Wind’s strategic efforts would be diminished or nullified. The confidential language in the Option therefore constitutes “commercial or financial information” to which the APRA public disclosure requirements do not apply. *See* Gen. Laws § 38-2-2(4)(B); *Kane*, 577 A.2d at 663.

Revolution Wind treats the redacted information in EFSB 3-3-1 as confidential and commercially sensitive. Revolution Wind does not generally make it available to the public, other companies, or regulatory bodies in the absence of a protective order or confidentiality agreement. Disclosing this financial information publicly as part of the Board’s Application review process would “constitute an unwarranted invasion of personal privacy” and “cause substantial harm” to Revolution Wind’s “competitive position.” *See* Gen. Laws § 38-2-1;

*Convention Ctr. Auth.*, 774 A.2d at 47.

The redacted information contained in Revolution Wind's response to EFSB 33, Attachment 3-3-1 contains "commercial or financial information" to which the APRA public disclosure requirements do not apply. *See* Gen. Laws § 38-2-2(4)(B); *Kane*, 577 A.2d at 663. Revolution Wind has provided a narrowly redacted public version of Attachment EFSB 3-3-1 to balance the public's interest in access to information with Revolution Wind's privacy considerations. Revolution Wind therefore respectfully requests that the Board grant protective treatment to the redacted portions of Attachment EFSB 3-3-1 and take the following actions to preserve its confidentiality: (1) maintain the unredacted version of Revolution Wind's response to EFSB 3-3, Attachment 3-3-1 as confidential indefinitely; (2) not place any unredacted version of Attachment EFSB 3-3-1 on the public docket; and (3) disclose an unredacted version of Attachment EFSB 3-3-1 only to the Board, its attorneys, and staff as necessary to review Revolution Wind's application.

**WHEREFORE**, Revolution Wind respectfully requests that the Board grant its Motion for Protective Treatment.

Date: October 21, 2021

Respectfully submitted,

Revolution Wind, LLC,  
By its attorneys,



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**CERTIFICATE OF SERVICE**

I hereby certify that on October 21, 2021, I sent a copy of the foregoing to the service list by electronic mail.

/s/ Adam M. Ramos

**SB-2021-01 Revolution Wind, LLC Application for Major Energy Facility**  
**Updated October 19, 2021** (by HA&S)

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